

Regional Integration in Africa

Is the African Union facing legitimacy problems?

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Lisa Björsne

Tutor: Helen Lindberg
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ABSTRACT

The African Union (AU) is the continent-wide project for economic and political integration in Africa. It takes inspiration from the European Union (EU), where two major problems could be discerned. Firstly, the European and the African context differ from each other, economically, socially and politically. Secondly, the EU itself has been criticized for legitimacy problems, including ineffective decision-making processes, not satisfying tasks for the European Parliament (EP), and low voter turnout in the elections to the EP. Thus, it is interesting to ask whether it is possible to create a legitimate African Union with the objectives to unite and strengthen the African continent through political and economic actions, when it takes inspiration from a quasi-supranational organization which operates in a different political setting, and whose legitimacy has been highly questioned.

The purpose of this paper was to examine and discuss whether the AU faces legitimacy problems, and if it does, what kind of legitimacy-problems? To specify the purpose, three questions were posed:

- What is the status of the process of making the Pan-African Parliament (PAP) a legislative and popularly authorized organ?
- What are the AU's ambitions and means for building a common African identity?
- How is the AU financed, and what can be said about the economy's effect on the AU's capacity to perform effectively?

The conclusions show that the AU seems to be facing legitimacy problems. Firstly, a legislative organ is important in this kind of organization, and in order to be a legitimate legislative organ it is important to have the representatives elected by the people. The project of transforming the PAP into a legislative organ has started, but to let the people elect their representatives to the PAP has not yet been provided for. Secondly, it seems like the AU have problems concerning funding. The basic means for funding the AU is through member-state contributions, and the AU suffers from outstanding payments, delayed payments, and some also argues that the member-state contributions are too small. This is a major obstacle for the union's development, since a weak economy will hinder the AU institutions' performance. The AU also stands before a huge task of creating a shared African identity – that is, creating the African demos. The ambitions for carrying out this project are expressed in different AU-documents, and the PAP have a great role in this project. Although, to study how this project is going was not a part of this paper's purpose and is left for further research.

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1. INTRODUCTION

In the early decades of African independence, African leaders demonstrated willingness to strengthen the African continent towards the surrounding world, and since the 1960's several regional integration-based institutions have been established throughout Africa.¹ The Organization for African Unity (OAU) was formed in 1963 in order to, among other things, promote the unity and solidarity of African states and coordinate and intensify their cooperation and efforts to make the life better for the peoples of Africa. Other objectives were to eradicate all forms of colonialism from the African continent and to promote international cooperation.²

Transformations in international economic relations, the economic challenges facing Africa, and conflicts within the African continent made clear that the OAU did not have the capability to handle these challenges.³ This led to the creation of the African Union (AU)⁴ in 2002. The AU is Africa's principal organization for promoting the continent's socio-economic integration.⁵ It promotes unity between the African states, and it also promotes partnerships between the governments and the civil society. It has a strong peace and security agenda, since stability is needed for the AU to be able to achieve its development goals.⁶

Several writers emphasize the importance of African integration. Rene N'Guetia Kouassi says that the process of regional integration is important for Africa, since it is through political and economic integration the continent can be a strong actor in the globalized world.⁷ Prof. Severine Rugumamu supports this statement, and writes:

¹ Packer C.; Rukare, D. (Apr., 2002) "The New African Union and Its Constitutive Act", *The American Journal of International Law* Vol. 96, No. 2: pp. 365-379, p. 366; Kouassi, R., (July 2002), "The Itinerary of the African Integration Process: An Overview of the Historical Landmarks". *African Integration Review* Vol. 1, No. 2, p. 1.

² www.africa-union.org "AU in a nutshell" (http://www.africa-union.org/root/au/AboutAu/au_in_a_nutshell_en.htm, May 2nd 2009);

www.iss.co.za "Profile: African Union (AU)" (http://www.iss.co.za/index.php?link_id=3893&slink_id=3070&link_type=12&slink_type=12&tmpl_id=3, accessed: May 2nd 2009);

Packer C.; Rukare, D. (2002) p. 366.

³ Packer C.; Rukare, D. (Apr., 2002) p. 367-369; Kouassi, R. (July 2002) p. 8.

⁴ All African countries except Morocco are members of the AU. Morocco has chosen to not be a part of the AU, and has instead seek membership in the European Union.

⁵ The term 'integration' is used in following ways: socio-economic integration; economic and political integration, regional integration and African integration, all referring to the project of uniting nation-states both economic and politically. The African Union, and the European Union, are here defined as this kind of project.

⁶ www.africa-union.org "AU in a nutshell" (http://www.africa-union.org/root/au/AboutAu/au_in_a_nutshell_en.htm, May 2nd 2009).

⁷ Kouassi, R. (July 2002) p. 2.

“The emergence and development of regionalism on a global scale clearly indicates that individual states outside the major economic and security blocs will find themselves slowly but inexorably cast aside. If Europe needs economic and political integration for strength and prosperity, Africa needs it for survival. Only through integration can the continent collectively and effectively respond to the multifaceted challenges posed by the processes of globalization”.⁸

The AU takes inspiration from the European Union (EU), but it also has its own features. In 2007 it was agreed upon in the Accra Declaration that the AU shall become federation – a United States of Africa with a Union Government.⁹ Though, analysts who have studied the Constitutive Act of the African Union, as well as the documents and organizations preceding the AU, has so far found more similarities between the AU and the EU, than between the AU and the United States of America.¹⁰ The ongoing establishment of the African Union is an interesting development within the field of regional integration, and it is a rapid process taking place right now.

1.1 Problem

Similarities can be found between the AU and the EU, both in the model for market integration and in the set of institutions.¹¹ Commentators often imply that the AU is a too big challenge for Africa, and they refer to the great diversity of culture on the continent, particularly in terms of language and religion. Though, such difference has not stopped the European nations from establishing the EU. Even if Europe's history is characterized by conflicts and wars, this has not prevented the state leaders from producing a common currency, a European passport, and proposed European constitution. So if Europe could make it, why would not the African nations be able to reach their goals of unity?¹² Two issues may be raised here: the political and economic context, and the fact that the EU itself is facing legitimacy problems. Firstly, the preconditions for economic and political integration differs between Europe and the African continent, and it is important to remember the colonial heritage, which has affected both political and economic dimensions of the African societies.¹³ Also the political, economic and social configurations differ in a higher extent between the countries on the African continent than between the European countries.¹⁴ Conflicts, poverty and

⁸ Rugumamu, S. (2004) “Africa's Search for Regional Cooperation and Integration in the 21st Century”, ACBF Working Paper ACBFWP/03/2004, The African Capacity Building Programme, p. 2.

⁹ Accra Declaration, (2007).

¹⁰ See for example G. Musila (2007); A. Kössler (2007).

¹¹ Kössler, A. (2007) “The EU as a Role Model for African Integration?” Discussion Paper in Kössler, A. and Zimmek, M. (eds.) *Global Voices on Regional Integration*, p. 20f.

¹² Christian, M. (2007) “Marcus Garvey and African Unity: Lessons for the future from the past”, *Journal of Black studies*; 39:316. p. 321f.

¹³ Christian, M. (2007) p. 318

¹⁴ Kössler, A. (2007) p. 19f.

deft are other problems for many African countries.¹⁵ Secondly, the EU itself is said to be experiencing legitimacy-problems. David Beetham and Christopher Lord have analyzed the problems of legitimacy that the EU is facing today, and they have divided the question of legitimacy on EU-level into three criteria: democracy within the EU-institutions, a shared identity among the European peoples, and the conditions for effective performance of the institutions. The critique they address the EU when it comes to legitimacy is for example ineffective decision-making processes, not satisfying tasks for the European Parliament (EP) and lack of a common European identity which in turn could be one reason to the serious problem of a low political participation among the people, resulting in a low voter turnout in the elections to the EP.¹⁶

Against this background it is relevant to pose the question: Is it possible to create a legitimate African Union with the objectives to unite and strengthen the African continent through political and economic actions, when it takes inspiration from a quasi-supranational¹⁷ organization which operates in a different political setting, and whose legitimacy has been highly questioned?

1.2 Purpose

Derived from this broader question, and against the background of Beetham and Lord's theory on legitimacy on quasi-supranational level, the purpose of this paper is to examine and discuss whether the AU is facing legitimacy problems, and if it does, what kind of legitimacy problems?

To specify this purpose, following questions will be answered:

- *Democracy*: What is the status of the process of making the Pan-African Parliament (PAP) a legislative and popularly authorized organ?
- *Identity*: What are the AU's ambitions and means for building a common African identity?
- *Performance*: How is the AU financed, and what can be said about the economy's effect on the AU's capacity to perform effectively?

It may be regarded as “unfair” to make this kind of study and pose this kind of questions when it comes to a union as young as the AU.¹⁸ Though, the AU has presented high goals to be reached

¹⁵ Rugumamu, S. (2004) p. 4.

¹⁶ Beetham, D., Lord, C. (1998) *Legitimacy and the European Union*, p. 23ff.

¹⁷ This term is borrowed from David Held, who describes the European Union as a quasi-supranational organization, since it is an international organization consisting of sovereign states at the same time as it has supranational features such as law-making organs. This term will be used for describing both the EU and the AU. Held, D. (2006) *Models of Democracy*, Polity Press, Cambridge, p. 299.

¹⁸ Musila, G. M. (June 2007) “United States of Africa. Positioning the Pan-African Parliament and Court in the

within a short period of time, therefore it is relevant to make this study and to examine the potential problems of legitimacy this union may be exposed to.

1.3 Methodology

This study is a case study of the AU. A case study is a method where the researcher studies a certain case, it may for example be a company, a person, an organization or an institution.¹⁹ The researcher chose the case because of a specific hypothesis the researcher has, or because of a special interest. This method can be said to have following four characteristics: It is *particularistic*, which means that the study focuses on one particular situation of phenomenon. It is *descriptive* in the sense that the end product of the study is a complete description of the phenomenon. It is also *heuristic*, which means that the study illuminate the reader's understanding of the chosen case. Finally, the case study is often *inductive* – generalizations, concepts and hypotheses emerge from an examination of data.²⁰ The case study uses much of the basic logic from qualitative methods – that is, to understand the meaning of a certain phenomenon, and to understand how all the parts of this phenomenon are interconnected. According to this view, there are multiple realities and the world is seen as a function of personal interaction and interpretation and this subjective world is in need of interpretation instead of absolute measuring.²¹

The advantages of a case study is that it offers a means of investigating different units of potential importance in understanding a particular phenomenon. The results from a case study offers insights and illuminates meanings that expand the readers' experiences. These insights can bring about tentative hypotheses that help structure future research. This means that the case study is of great importance in advancing a field's knowledge base.²²

To use the case study as research method may demand the access to financial resources and may be time-consuming. The study risks to become too lengthy, too detailed or too involved for the audience to read and use. Therefore it is very important, as with many other research methods, to delimit the study.²³ Additional critique is that case studies may oversimplify or exaggerate a situation, and thereby the reader may be lead to erroneous conclusion of a situation. Readers may

political union debate". ISS paper 142, p. 9.

¹⁹ Merriam, S. B. (1988) *Case Study Research in Education*, Jossey-Bass Inc., Publishers, California, p. 9; Bryman, A. (2008) *Social Research Methods*, Oxford University Press, New York, p. 52ff.

²⁰ Ibid., p. 13.

²¹ Ibid., p. 17.

²² Ibid., p. 32.

²³ Merriam, S. B. (1988) p. 33.

also get the impression that the study describes the whole, when it in fact describes just a small part of the reality.²⁴ Another weakness with the case study as a research method is the issue of external validity – that is, to which extent the results are generalizable to other cases. Often, the results from a case study are not generalizable. According to Alan Bryman, the external validity is not of high importance for the case study, instead the quality of the theoretical reasoning is of greater concern.²⁵ Robert K. Yin's answer to this dilemma is that case studies rely on analytical generalization, which means that the researcher “...is striving to generalize a particular set of results to some broader theory”²⁶, as opposed to statistical generalization. This study aims at studying the regional integration project for Africa, the AU, only. Based on the theoretical framework, constituted by the criteria from Beetham's and Lord's theory and additional theories on regional integration in Africa, the study aims to describe and analyze the legitimacy problems this particular project may face.

Another problem when using the qualitative case study as research method is the issue of reliability, which means to which extent the researcher's findings can be replicated. Because of different reasons – for example that the issue examined is multifaceted, highly contextual, because the information gathered is dependent on who gives the information and the researcher's skill of getting the information and use it – a qualitative study will not yield the same results twice. However, this does not discredit the results of the original study, since several interpretations of the data can be made. All interpretations can stand until they are contradicted by new evidence. Instead of talking of reliability in traditional sense, one may instead talk about 'dependability' or 'consistency' of the results. This means that “...rather than demanding that outsiders get the same results, one wishes outsiders to concur that, given the data collected, the results make sense – they are consistent and dependable.”²⁷

In this study of the legitimacy of the African Union, three questions constitutes the guidelines for fulfilling the purpose of this paper. The questions are derived from David Beetham's and Christopher Lord's theory of the legitimacy of the EU, which focuses on the criteria of democracy, which involves means for authorization and possibilities for representation; the incentives for, in their case, a common European identity; and the question of an institution's ability to effective performance. According to Beetham and Lord, this is the most suitable way of studying legitimacy on quasi-supranational level. Since Europe and the African continent differ significantly when it

²⁴ Guba E. G. and Lincoln, Y. S. (1981) *Effective Evaluation*, in Merriam, S. B. (1988) p. 33.

²⁵ Bryman, A. (2008) p. 55, 57.

²⁶ Yin, R. K. (2003) p. 37.

²⁷ Merriam, S. B. (1988) p. 171f.

comes to political and economic conditions, regional integration-theories developed for the African continent and the African context will be added in order to create a theoretical framework that is applicable on the AU. Writers who has developed such theories are among others Prof. Severine Rugumamu, Godfrey Musila, and Corinne A. A. Packer and Donald Rukare. The study is theory-testing in the sense that the aim is to understand and interpret the findings of this case-study by the use of a theoretical framework²⁸, based on a theory of legitimacy on quasi-supranational level and completed by theories on regional integration in Africa.

Another issue when discussing research method is the one of internal validity. Internal validity refers to the question whether we are measuring what we think we are measuring.²⁹ According to Beetham and Lord, the best way of studying legitimacy on quasi-supranational level is to study the criteria of democracy, identity and performance. In this paper three questions connected to these criteria were posed, and the answers will be searched in the documents governing and developing the African Union. By the use of these questions, a study of whether the African Union is facing legitimacy problems will be carried out, and the internal validity is strengthened.

1.4 Sources

The specifying questions presented above will be answered through qualitative studies of the Constitutive Act of the African Union (the CA, 2001), the Accra Declaration (2007), the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament (The Protocol, adopted in 2001) and The final draft proposal to amend the Protocol (2009)³⁰. Studies of press releases and other documents related to the 11th Ordinary Session of the PAP, held in may 2009, and the 13th African Union Summit held between June 24th and July 3rd 2009 in Sirte, Libya will also be done, in order to answer the questions. Statements and expressions on the issues of a common African identity and on the incentives for making the PAP a popularly authorized, legislative organ will be paid attention. The answer to the third question will be searched in the CA and in the Treaty Establishing the African Economic Community (also called “the Abuja Treaty”). Though, this issue is not very well presented in these documents and the information found there will be supplemented by additional sources which discuss the issue of the funding for the AU. One of the writers who has studied the funding for the AU earlier is Dr. Emmanuel Akwatey, the executive director of the Institute for Democratic Governance (IDEG) in Accra, Ghana.

²⁸ Merriam, S. B. (1988) p. 58.

²⁹ Ibid., p. 166f.

³⁰ The document “The Pan-African Parliament Debates Official Report of the Eleventh Ordinary Session” is on the PAP's website also referred to as the “Hansard Reports for the Eleventh Ordinary Session of the PAP”.

According to Sharan B. Merriam, three problems can be derived from the choice of using documents as source. Firstly, the documents have not been developed for research purposes, and may therefore be incomplete from a research perspective. Secondly, this may also mean that the information comes to the researcher in a way he or she does not fully understand. A third problem concerns determining the documents' authenticity and accuracy.³¹ The choice to study the mentioned documents were made by looking at the questions and asking 'where can the answers to these questions best be found?' These documents constitutes the rules for how the AU shall be governed and developed, thus, they are the best sources for this study. The additional information has been found successively during the work with this paper, and has been chosen in order to give a picture of the latest developments concerning the issues of democracy, identity and performance in the AU. A problem for this study has been that the sources sometimes have been incomplete, especially concerning the question of the funding for the AU. This problem was handled by using previous research on the issue. An additional problem concerning the use of documents as sources is the question whether the researcher has access to a totally comprehensive set of information.³² In this study it has many times been difficult to find the relevant information. When it comes to the proposed amendment of the Protocol, the existence of this information were known early on in the process of this study, but the document in which it was presented was not published until very late in the process. The fact that this document was published gave important additional information to the study. Interesting and relevant facts were finally found, and the result is that this study can give a good picture of the legitimacy of the AU (based on Beetham's and Lord's four criteria), but there is still an uncertainty concerning other, for the researcher unknown, sources.

1.5 Delimitations

In order to keep focus on the purpose of the paper, some delimitations have been made. The paper examines the African Union today, but since it is a union which is developing very fast, there will also be some discussions on the future of the PAP and its importance for the creation of a United States of Africa and a Union Government. Furthermore, within Africa several sub-regional integration projects, so called Regional Economic Communities (RECs) exists (i.e. ECOWAS, COMESA, SADC). These are a crucial part of the regional integration in Africa, but these will not be discussed in this paper. Instead the focus will on the African Union, the integration project for the whole African continent. Also, the AU has a strong security agenda, and has had peace-keeping forces in Darfur (Sudan), Somalia and Burundi. Though, this issue will not be subject for this paper.

³¹ Merriam, S. B. (1988) p. 106.

³² Bryman, A. (2008) p. 523.

Although this study is not a comparative study of the EU and the AU, a short presentation of the two unions will be made in order to give a brief overview. Also Beetham's and Lord's arguments for the EU's legitimacy-deficit will be presented in this paper in order to show the structure, possibilities and problems of the quasi-supranational organization which is the AU's source of inspiration. Still, it is not a comparative study.

2. BACKGROUND

In this section the main organs of the EU and the AU will be presented in order to give a brief overview of the two unions. This will make it easier for the reader to understand the structure of the AU and the EU, and some of the similarities and differences between the unions will be more visible. First, the main organs of the EU will be presented and this is followed by a presentation of the AU. The section about the AU begins with a description of the AU's history. This presentation is important since some commentators³³ argue that the rapid development of the AU is one of the special features of the African regional integration project.

2.1 The organization of the EU

2.1.1 The European Commission

The executive organ of the EU is the European Commission. This institution is independent of national governments, and its task is to represent and uphold the interests of the EU as a whole. The commissioners are appointed in the member-states. They may have had political assignments in their home-countries, but in the Commission they work independently from their national governments. The Commission drafts proposals for new laws for the EU, and it presents these proposals to the European Parliament and the Council. As mentioned above, the Commission is the EU's executive branch which means that the Commission that is responsible for implementing the decisions taken in the European Parliament and in the Council of the European Union.³⁴

³³ See for example Rugumamu, S. (2004); Kössler, A. (2007); Hugo, G. (2008); Packer, C. and Rukare, D. (2002).

³⁴ [www.europa.eu](http://europa.eu) "The European Commission" (http://europa.eu/institutions/inst/comm/index_en.htm accessed June 12th 2009)

2.1.2 The Council of the European Union

The main decision-making body of the EU is the Council of the European Union (sometimes referred to as the Council of Ministers). Here the ministers of the member-states meet, and depending on the issue on the agenda the member-states send their minister responsible for the specific subject. A member-state holds the presidency of the Council for six months, and then hands the presidency over on rotational basis. The Council passes laws, and since the powers of the European Parliament (the EP) were extended, the EP has the power to be a part of this procedure. The Council also co-ordinates the broad economic policies of the member-states and it constitutes, together with the EP, the budgetary authority that adopts the Community's budget. These are just a few of the Council's tasks.³⁵

2.1.3 The European Parliament

The European Parliament (EP) is the only EU-institution that is directly elected. It is a supranational institution with distinct features. Among other things it is a project of trans-national democracy, it is highly multi-lingual, and it differs from the national parliaments of the EU member-states in that way that no government emerges from a majority in the Parliament. This means that the elections to the European Parliament is not about keeping and changing executive power. The history of the European Parliament goes back to the early creation of the Council of Europe European Coal and Steel Community (ECSC). In the initial period, the Parliament only served as an advisory body and it was composed of delegations from the member-states' national parliaments. In 1979 the members of the EP were elected by the people in the member-states for the first time. The elections were designed in order to generate greater legitimacy for the EP, and also to generate public discussions on European issues. The Parliament has developed over the time, and today it has some legislative power and budgetary powers.³⁶ Though, today the EP has problems concerning its legitimacy. This critique concerns for example low voter turnout, deficits when it comes to accountability and efficiency and inadequate parliamentary control over the Commission and the Council of Ministers³⁷

³⁵ www.europa.eu "The Council of the European Union" (<http://www.consilium.europa.eu/showPage.aspx?id=242&lang=en> accessed June 12th 2009)

³⁶ Corbett, R., Jacobs, F., Shackleton, M. (2000) *The European Parliament*, 4th ed., p. 2-6.

³⁷ Lodge, J. (January 1994) "The European Parliament and the Authority-Democracy Crisis", *Annals of the American Academy of Political and Social Science*, Vol 531: "The European Community: To Maastricht and Beyond", pp. 69-83, p. 82; Oscarsson, H., Holmberg, S. (2007) "Demokratistatistisk rapport 6", Statistiska Centralbyrån, p. 7.

2.2 The organization of the AU

2.2.1 The history

One of the special features of the African continent-wide integration project is its history. This special history starts with the establishment of the OAU, and continues with the ratifications of different treaties and documents in order to develop and strengthen the African continent, and in order to develop the regional integration project. Two important documents are the Lagos Plan of Action and the Final Act of Lagos (1980). These documents highlight the principles and objectives, as well as the different stages and measures, for achieving collective self-sufficiency of the African countries. These are the first documents leading to the establishment of the African Economic Community.

The next important document is the Abuja Treaty Establishing the African Economic Community (1994), also called the Abuja Treaty. This treaty constitutes the guidelines for achieving Africa's economic integration objectives and for establishing the African Economic Community (the AEC). This development was supposed to take place within a period of 30-39 years, a period broken down into 6 stages. In short, the Abuja Treaty aims to achieve the objectives of increasing economic self-sufficiency of the African continent and to create a continent-wide framework for development. The objectives are also to promote cooperation in order to increase the living standards of the African people, to achieve and maintain economic stability and to create peaceful relations in Africa. Lastly, the treaty also aims at coordinate and harmonize policies among the Regional Economic Communities (RECs), and in the end to achieve a gradual establishment of the AEC.³⁸

The implementation of the Abuja Treaty was supposed to take place in 6 stages. The first four stages focuses on the strengthening and harmonization of the RECs through stabilization of tariffs and the establishment of free trade areas. In the fifth stage the treaty aims at establish a common African market with, among other things, free movement of people. The sixth stage, that is after about 30 years from the time the treaty entered into force, focuses on the establishment of an African Central Bank, a single African currency and the Pan-African Parliament, with representatives elected by universal suffrage.³⁹

In the late 1990's, Africa still faced heavy economic problems caused by heavy external debt burdens, and the continent was weakened in relation to the fast developing economic entities in the

³⁸ Kouassi, R. (2002) p. 3-6.

³⁹ Treaty Establishing the African Economic Community, Article 6.

surrounding world.⁴⁰ The African leaders wanted more to be done in order to develop the economic cooperation on the African continent, and in 1999 the Sirte Declaration was signed. The Sirte Declaration expressed the ambition to establish the African Union and to accelerate the establishment of the institutions presented in the Abuja Treaty – the institutions of the AEC. After this, a draft to the Constitutive Act of the African Union (the CA) was developed, circulated and completed, all within the period of one year. The Abuja Treaty had entered into force without much attention from the surrounding world, and this is noteworthy since the CA takes most of its provisions from the Abuja Treaty.⁴¹ In May 2001, the CA entered into force, which meant the end of the OAU, and the start of the African Union. The AU held its inaugural session in 2002.

2.2.2 The Assembly

The Assembly is composed of the Heads of States and Government and it is the supreme organ of the AU. Among other things, the Assembly determines the common policies of the Union and adopts the budget for the AU. It has the task to receive, consider and take decisions on reports and recommendations from the other organs of the Union, establish any organ of the Union, and give directives to the Executive Council on the management of conflicts, war and other emergency situations. The Office of the Chairman of the Assembly shall be held by a Head of State or Government elected after consultations among the Member States⁴², and this assignment is for one year.⁴³

2.2.3 The Executive Council

The Executive Council is composed of the Ministers of Foreign Affairs, or other Ministers as are designated by the governments of the member states, and this organ is responsible to the Assembly. It has many tasks, for example to prepare the sessions of the Assembly and to determine issues to be submitted to the Assembly for decision. It coordinates the policies and activities of the AU and it supervises the implementation of the decisions and agreements adopted by the Assembly. Furthermore, it considers and makes recommendations on reports and recommendations from other AU organs that do not report directly to the Assembly.⁴⁴

⁴⁰ Kouassi, R. (2002) p. 8.

⁴¹ Packer C.; Rukare, D. (2002) p. 369-371.

⁴² In February 2009 the leader of The Great Socialist People's Libyan Arab Jamahiriya (Libya), Colonel Muammar Gaddafi was elected the Chairman of the Assembly. He has far-reaching plans when it comes to African integration, and he is one of the greatest advocates if a United States of Africa and a Union Government.

⁴³ The Constitutive Act of the African Union, Article 6 and 9.

⁴⁴ Rules of Procedure of the Executive Council.

2.2.4 The Pan-African Parliament

The Pan-African Parliament (PAP) was according to the Abuja Treaty meant to be established about 30 years after the treaty had entered into force. Though, with the ratification of the Sirte Declaration, the PAP was established in a much earlier stage, and the parliament held its inaugural session in 2004. Its purpose is to ensure full participation of the African peoples and their grass-root organizations and to make them involved in the decision-making processes. As for today, the PAP does not have any legislative powers and the representatives are appointed by the governments of the member-states. This means that today the PAP is only a consultative organ. Though, in the “Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament” (the Protocol) it is stated that the aim is to transform the PAP into a legislative organ with representatives elected by the African people.⁴⁵ In this paper we will find out what the status is of this process.

3. THEORY

The purpose of this paper is to examine and discuss whether the AU is facing legitimacy problems, and if it does, what kind of legitimacy problems? This means that we first need a definition of legitimacy. Secondly, we have to handle questions concerning what kind of political phenomenon an organization like the AU is, or is becoming; what role its institutions have, or will have; and what criteria of legitimacy that will be suitable for a study of its institutions.⁴⁶

Democracy and legitimacy are concepts that traditionally have had focus on the nation-state. Legitimacy is usually used to describe the relationship between the governing institution and the governed, in other words, to describe a hierarchical relationship on national level.⁴⁷ It is a way to define to which extent the governing institutions get support from the people governed by it. However, today the world has changed, and we can no longer talk about democracy and legitimacy connected only to the nation-states. David Held gives two examples of problems that can be derived from a nation-state-centered view on democracy and legitimacy. Firstly, decisions taken by the

⁴⁵ Protocol to the treaty establishing the African Economic Community relating to the Pan-African Parliament Article 2(3).

⁴⁶ See Beetham, D., Lord, C. (1998) *Legitimacy and the European Union*, p. 2, where the same kind of questions are presented for their study of the European Union and what kind of legitimacy-problems this supranational union faces.

⁴⁷ Steiner, K. (1996) *Strategies for International Legitimacy*, Lund Univ. Press, Lund, p. 28.

peoples representatives in one country may affect the citizens in other countries. Secondly, decisions taken by quasi-regional or quasi-supranational organizations may “diminish the range of decisions open to given national 'majorities'”.⁴⁸

Held calls the EU a “quasi-supranational” organization, since it differs from international organizations through its right to make laws valid for all member-states.⁴⁹ The term will in this paper be used to describe both the EU and the AU. Since these quasi-supranational organizations in several ways differ from nation-states and international organizations, it is important to decide whether the legitimacy of these unions “should be understood according to the same criteria as those applicable to political authority in the nation state, or quite differently”.⁵⁰ David Beetham and Christopher Lord have developed a model for studying legitimacy both on national level and quasi-supranational level, and their study focuses on the EU. The answer they give the question is that the process of interaction between the EU-level and the member-state level has to be the base for our understanding of political legitimacy for the EU.⁵¹

The following section presents the different classic definitions of legitimacy. Two opposing traditions may be discerned, and there are also theories that can be found between these two. This presentation will be followed by Beetham's definition of the concept. Finally, the process through which Beetham and Lord make it possible to apply Beetham's definition of legitimacy on quasi-supranational level, will be presented. The criteria they set up will then be used as a the base for the theoretical framework for a study of the AU. Since the European context differs from the African conditions for regional integration, the theoretical framework will be completed by additional theories on African integration and the African context.

3.1 Legitimacy on the national level

Before we get to the different definitions of the concept of legitimacy, it's relevant to state why legitimacy is important. Robert A. Dahl writes:

Although many different kinds of political systems can acquire legitimacy, democracies may be more in need of it than most other systems. In the long and probably even the the short run, a group of people cannot be forced or coerced to participate in a successful democracy against

⁴⁸ Held, D. (2006) *Models of Democracy*, Polity Press, Cambridge, p. 291.

⁴⁹ *Ibid.*, p. 299.

⁵⁰ Beetham, D., Lord, C. (1998) p. 2.

⁵¹ *Ibid.*, p. 3.

their will; in fact, democracy is unlikely to survive when a large minority opposes it, for democratic institutions would encounter rough going if a majority always had to impose its rule on a large minority.⁵²

As mentioned above, legitimacy is a way to describe the hierarchical relationship between the holder of power and the subordinate, for example between a government and the governed. Though, there is no consensus on what makes a government legitimate or illegitimate.

Two traditions of defining legitimacy – which constitutes two extreme poles on the map of defining the concept – can be discerned.⁵³ Firstly, there is the view used within political philosophy, which regards legitimacy as a moral phenomenon – it is a view where legitimacy is based on fixed norms. To have power that is legitimate means that the rules governing the power are justifiable according to fixed normative principles that can be defended by all people through rational argumentation. The Principles that can be agreed upon by any rational person are the legitimate principles. These principles are universal, and thereby not particular for different societies.⁵⁴

The other position derives from Max Weber's sociology. Weber described legitimacy as a relative and relational concept, which states that the relationship between the governing and the governed is legitimate if the governed believe that this relationship is legitimate. The core in Weber's theory is the 'belief in legitimacy'.⁵⁵ The writers within this tradition mean that what is legitimate in one society can differ from what is legitimate in another society – what is legitimate for one may be opposed by another. This view is supported by Dahl, who argues that the structure and the actions of a government is said to be legitimate if the people to whom its processes are directed believe that these “posses a quality of 'rightness', propriety, or moral goodness”.⁵⁶ The advantage of the sociological position is that it is unbiased, which results in that it is applicable to different systems of norms. Though, it suffers from the disadvantages of an alleged amorality, which means that the actions of one state, or a holder of power, could be defined as legitimate even if these actions may contradict the moral sense of most men. Political philosophers critique against Weber's definition focuses on how it has been emptied of its normative contents and they accuse Weber for having distorted the essential meaning of legitimacy.⁵⁷

⁵² Dahl, R. (2003) *Modern Political Analysis*, p. 61.

⁵³ Steiner, K. (1996) p. 23.

⁵⁴ Beetham, D. (1992) *The legitimation of power*, Palgrave Macmillan, London, p. 5.

⁵⁵ Weber, M. (1978) *Economy and Society*, University of California Press, Berkeley and Los Angeles, p. 213.

⁵⁶ Dahl, R. (2003) p. 60.

⁵⁷ Steiner, K. (1996) p. 25.

We can also find writers who can be placed between these two extreme positions. They can be placed here according to their attempt to stay within the sociological understanding of legitimacy, at the same time as they have up-graded the role of relative norms.⁵⁸ Seymour M. Lipset is one of the writers found here, and his definition of legitimacy is “Groups will regard a political system as legitimate or illegitimate according to the way in which its values fit in with their primary values”.⁵⁹ Peter G. Stillman defines the concept in a similar way, when he says that “Legitimacy is the compatibility of the results of the governmental output with the value patterns the relevant systems”.⁶⁰ By “relevant systems” Stillman means “those systems on or in which the results of governmental output are felt”.⁶¹ Stillman also states that legitimacy and illegitimacy are not dichotomous, instead legitimacy is something that varies along a continuum.⁶²

Also David Beetham can be placed in the space between the traditions of political philosophy and sociology. Even though Beetham strongly disaffiliates from Weber, who he criticizes by saying that Weber's theory on legitimacy “has been an almost unqualified disaster”⁶³, he still agrees with Weber on one point – that legitimacy is relative. Below we will see that one part of Beetham's definition of the concept involves a criteria which says that beliefs shared by both the dominant and the subordinate should justify legal rules. At the same time, he takes his starting point in a universal, underlying structure of legitimacy, based on a view of the human being as a rational moral agent.⁶⁴

3.2 Beetham's theory on legitimation of power

Also Beetham starts by defining legitimacy as a concept describing an hierarchical relationship on national level, but later he shows how it is possible to apply this definition on quasi-supranational level. Beetham argues that legitimacy has to be recognized as a concept with a multi-dimensional character. He says: “Power can be said to be legitimate to the extent that:

- i. it conforms to established rules
- ii. the rules can be justified by reference to beliefs shared by both dominant and subordinate, and,
- iii. there is evidence of consent by the subordinate to the particular power relation”.⁶⁵

⁵⁸ This classification is borrowed from Kristian Steiner, *Strategies for International Legitimacy* (1996).

⁵⁹ Lipset, S. M. (March 1959) “Some social Requisites of Democracy: Economic Development and Political Legitimacy”, *The American Political Science Review*, Vol. 53, no. 1, pp. 69-105. p. 86-87.

⁶⁰ Stillman, P. G. (Autumn, 1974) The Concept of Legitimacy, *Polity*, Vol. 7, No. 1 , pp. 32-56. p. 42.

⁶¹ *Ibid.*, p. 42.

⁶² *Ibid.*, p. 42f.

⁶³ Beetham, D. (1994) p. 8, see also p. 23.

⁶⁴ *Ibid.*, p. 15, 22.

⁶⁵ Beetham, D. (1994) p. 15f.

Hence, the different levels are: rules; justifications grounded on beliefs; and actions. All these contributes to legitimacy, and can not be seen as alternatives.⁶⁶

Rules

If power is acquired and exercised in accordance with established rules, it can be said to be legitimate. The rules can be either unwritten (like informal conventions) or formalized in legal codes. Both types are highly influential and important, and they are based on norms agreed upon by most of the people in the society⁶⁷, who according to Beetham are rational moral agents. Breach of the rules – including when power is acquired in illegal ways and when power is exercised in a way that contravenes or exceeds the rules – Beetham calls “illegitimacy”.⁶⁸

Justifications grounded on beliefs

When it comes to the criteria of “justification grounded on beliefs”, Beetham means that power has to be derived from a valid source of authority in order to be justified and that rules must exist in order to guarantee that those who come to hold power have the qualities appropriate to hold this position. Further, to serve the general interest has to be the main task for the holder of power, which means that power should not be aimed at satisfy the interests of the powerful. These justifications depend on the current beliefs about what a rightful source of authority is and about what qualities are appropriate to exercise the power in a specific society.⁶⁹ This is what makes Beetham's theory relative. The corresponding negative opposite of this criteria is when the justification of the rules of power cannot be derived from shared beliefs. Weak justification might for example depend on that shared beliefs are non-existing in the first place or on that the shared beliefs have changed, and thus has deprived the rules of its supporting basis. Beetham calls this negative opposite “legitimacy deficit”.⁷⁰

Actions

The third level Beetham presents involves the demonstrable expressions through which the subordinate provides evidence of consent to the dominant. This can for example be through concluding agreements with the dominant, swearing allegiance or by casting a vote in elections. These actions have a subjectively binding force on those engaging in them, and they are a concrete confirmation of the authorities' legitimacy given by the subordinate. Also this is a relative criteria,

⁶⁶ Beetham, D. (1994) p. 16.

⁶⁷ Ibid., p. 20.

⁶⁸ Ibid., p. 16.

⁶⁹ Ibid., p. 17.

⁷⁰ Ibid., p. 17.

since what counts as consent, and also from whom this consent is required is a culturally specific matter. The negative opposite to the actions to provide evidence of consent to the dominant, is behavior such as non-cooperation and passive resistance, open disobedience and militant opposition. Actions, or non-actions, like these will in different ways erode legitimacy. Such withdrawal of consent is according to Beetham called “delegitimation”.⁷¹

Beetham has thus defined legitimacy, and he has also created a framework for studying the concept. This framework can be applied on all types societies and he will also show how it is suitable for describing quasi-supranational organizations. The framework has to be filled with the special features of each society. The degree to which an authority in a society is legitimate depends on to which extent it fulfills the criteria in this framework, which means that legitimacy is a matter of degree and the form of a legitimate government differs between societies – there is no “right” way of being legitimate. Similarly, non-legitimate ruling can vary and doesn't need to look the same everywhere, and this is expressed by Beetham's terms: illegitimacy, legitimacy deficit and delegitimation.

3.2.1 A liberal-democratic definition of legitimation

Beetham's definition of legitimacy is a liberal-democratic definition, and this is discussed in the book *Legitimacy and the European Union* (1998), by Beetham and Christopher Lord. The aim of their discussion is to conclude what the special features of a liberal-democratic legitimacy are, and also to distinguish three different criteria for studying this type of legitimacy. The criteria are democracy; identity and performance. By distinguishing these three criteria, Beetham and Lord create a means for studying legitimacy on both national and quasi-supranational level. The special features Beetham and Lord ascribe a liberal-democratic definition of legitimacy will now be explained and the three criteria will be derived from their argumentation. These criteria will create the basic framework through which the empirical fact found in the selected documents and texts will be analyzed. In this section the three criteria will just be given a short presentation. They will be further developed, and also linked to the African context, in the following section.

The first distinct feature of liberal-democratic legitimacy is that the subordinate through actions and procedures confirm the acknowledgement of authority. The group who is the source for the authority's legitimation is extended to comprise the whole adult population. Further, and most

⁷¹ Beetham, D. (1994) p. 19.

important, this group authorizes the government through electoral processes. Beetham and Lord call this “popular authorization” (which replaces the expression “consent” used earlier in the text). This feature is reflected in the criteria of *democracy*, which in turn includes authorization, accountability and representation.⁷² Since the holder of power, according to Beetham and Lord, shall be popularly authorized, and since the aim of the PAP is to transform the Parliament into a legislative organ with representatives elected by universal suffrage, the focus will in this paper be on the issue of representation and the status of the process of creating a popularly authorized Pan-African Parliament with legislative powers.

The next feature concerns the above mentioned popular authorization. The claim that the people should be seen as the source of the political authority means that we have to identify who the people is – in the context of this paper it means that we have to ask who the African people is. According to Beetham and Lord this “makes issues of political identity, of territoriality, of inclusion and exclusion, equally crucial for political legitimacy”.⁷³ This makes *identity* a criteria for studying legitimacy. The creation of a common identity is therefore important for integration projects like the EU and the AU, and for this paper this means that it is relevant to study the ambitions and means for creating an African identity.

The next criteria is that of government *performance*. Beetham and Lord regard the government's purpose as being “rights protector”, and the rights Beetham and Lord refer to are derived from John Locke's writings, where protection of life, liberty and property are central.⁷⁴ To this they add welfare rights and the governments responsibility to secure the conditions for economic growth. When it comes to the performance criteria, they emphasize that it is important to distinguish between legitimacy of an individual government and legitimacy of the political order in which it operates. The writers focus on the system, or organization, of power, and to which extent it facilitates or hinders the governments performance in its role as rights protector.⁷⁵

Beyond these three criteria lies two broad characteristics of liberal-democratic legitimacy: its special form of legality, and the issue of external recognition. The special form of legality is based on a written constitution approved by independent courts.⁷⁶ When it comes to the recognition of authority by other external authorities, the writers say that on national level such recognition is

⁷² Beetham, D., Lord, C. (1998) p. 7.

⁷³ Ibid., p. 6.

⁷⁴ Locke, J. 1952, The second treatise of government, in Beetham, D., Lord, C. (1998) p. 6.

⁷⁵ Beetham, D., Lord, C. (1998) p. 6.

⁷⁶ Ibid., p. 5.

important, since this recognition strengthens the relationships between states and constitutes a base for co-operation.⁷⁷

To summarize, liberal-democratic legitimacy has the following distinct features: The legal legitimation derives from the constitution. The principle of popular sovereignty is the source of political authority, and this means that we have to define who the people is, which in turn means that identity is a criteria for this view of legitimacy. Further, the purpose of the government is, in a broad sense, to defend the rights of the people. Here it is important to look at to which extent it is possible for the government to perform as an effective decision-maker, and here we find the criteria of performance. Lastly, popular authorization (consent) is achieved through electoral processes, and this is connected to the criteria of democracy and the issue of representation. Beetham and Lord add that legitimacy of a liberal-democratic state also is dependent on other nations recognition.

When making a definition of legitimacy, there are, according to Peter G. Stillman, three evaluative decisions that have to be considered. The theorist have to decide whether the concept according to his definition should be completely, partially or not at all dependent on the opinions of other states; a decision needs to be taken concerning which group (“or individual or source”) will decide whether the government is legitimate or not; and the theorist need to decide if his definition of legitimacy should be based on norms – and in that case, which norms? – or if norms are not the base for the definition.⁷⁸ If we put Beetham's and Lord's theory within this framework, we can see that the governments' legitimation is dependent on other states recognition, popular sovereignty is the source, that all human beings are rational moral agents and that the definition is based on those norms agreed upon by the both the subordinated and the holder of power. This shows that Beetham and Lord try to stay within the sociological understanding of legitimacy, in the sense that they mean that legitimacy is relative and may differ between societies, at the same time as they emphasize the relevance of norms. The result is that they can be placed between the tradition of political philosophy and the tradition of sociology.

3.3 To study legitimacy on quasi-supranational level

The next step in Beetham's and Lord's search for a way of applying this framework for studying legitimacy on the EU-level, is that they reject the definitions of an international institutions model of legitimacy and a technocratic model legitimacy as means to describe the legitimacy of the EU.

⁷⁷ Beetham, D., Lord, C. (1998) p. 8.

⁷⁸ Stillman, P. G. (1974) p. 35f.

The model of international institutions legitimacy focuses on agreements between states and does not include any consent of individual citizens, and they call that type of legitimacy “indirect legitimacy”. Legitimacy within a technocratic model is a direct form of legitimacy, and it focuses on the performance of the government and that the public good is best realized by having professional staff in charge instead of representatives elected by the people. Beetham and Lord does not find these theories sufficient, and they conclude that only the three liberal-democratic criteria of democracy, identity and performance “...are relevant to the authority of the EU, as they are to that of its member-states”.⁷⁹ This is how they find it possible to use the same framework for both nation-states and the EU. In this section the three different criteria will be presented. Since Beetham and Lord apply their theory on the EU, examples may sometimes refer to the functions and methods of the EU.

It has earlier in the text been stated that there are significant differences in the conditions for regional integration in Europe and Africa. Thereby it is obvious that it may be problematic to apply a theory developed for explaining the problems of legitimacy in the EU, on the AU. To handle this problem, theories discussing the African conditions will be added. Severine Rugumamu discuss the conditions for African integration and how existing integration projects in Africa should be carried out. His theory focuses mainly on the sub-regional integration projects on the African continent (the RECs), and the AU's economic dimension, the AEC. He argues that economic and political integration is necessary for Africa's survival – this is the only way in which Africa will be able to respond to the processes of globalization.⁸⁰ Even though his theory focuses on the RECs and the AEC, some parts of his theory are applicable on this study, since he describes the African context, and the suggestions he gives for the development of the RECs and the AEC can be seen as necessary for carrying out the integration project for the African continent. Before we get to the criteria of democracy, identity and performance, some conditions for African integration will be presented.

3.3.1 The African context

Africa suffers from civil wars, disintegration tendencies within states and societies, poverty and dept, and according to Rugumamu these problems characterize the environment for integration in Africa.⁸¹ He says that these problems make the ambitions of the Abuja Treaty very hard to reach,

⁷⁹ Beetham, D., Lord, C. (1998) p. 22f.

⁸⁰ Rugumamu, S. (2004) p. 4.

⁸¹ Rugumamu, S. (2004) p. 4.

especially within the rigid time-table set up.⁸² Also Corinne A. A. Packer and Donald Rukare see the tensions, the conflicts, the poverty and the current state of the African economy, as problems for African integration. When talking about the realization of a fully functioning African Union, they say that “the wide variety of, and disparity among, the states and situations in Africa pose a major problem”.⁸³

Rugumamu, as many other writers⁸⁴, emphasizes the importance of the history of the AU. The rapid process of African integration, which accelerated even more through the Sirte Declaration, constitutes one of Africa's special features. Rugumamu means that it is not possible to achieve the goals set up in the Abuja Treaty in such short time, especially not in an environment of civil wars and poverty. Dr. Admore Mupoki Kambudzi, the head of the Secretariat of the African Union Peace and Security Council, African Union Commission, says that it would have been preferable if the AU had chosen to not establish so many organs at once, as well as not be working within so many different fields at once. Doing it the way it is done today, he says, will be a financial burden for the AU. According to Kambudzi, an integration project which starts with a few institutions and which works within fewer sectors, would open up for the African states for collaboration in a more natural way, the benefits would be more tangible for the people, and it would be easier for the nation-states to yield sovereignty when trusting the foundation of the union.⁸⁵

Another problem Kambudzi sees is that the African countries are not integrated internally. What is required is the growth of transport and communication networks, energy and water supply networks, production systems and the provision of essential social infrastructures.⁸⁶ Furthermore, today the existing infrastructure is deteriorating. Without the unification of the nations internally, continental integration is inhibited. He also sees the big gap between the urban and rural sectors of the African countries as a special characteristic of African integration. He says that the urban sectors are relatively more endowed, but that they often face the problems of poverty as a result of overcrowding; dumping of foreign produce; and poor planning. He also says that the rural sectors often are ignored when it comes to the discussions of development and modernization. Since the rural sector is the backbone of many African countries, it is crucial to support this sector and also to minimize the gap between the urban and the rural sectors. Also Packer and Rukare emphasize the

⁸² Rugumamu, S. (2004) p. 4.

⁸³ Packer C.; Rukare, D. (2002) p. 378.

⁸⁴ See for example Rugumamu, S. (2004), Kössler, A. (2007), Hugo, G. (2008), Packer C. and Rukare, D. (2002).

⁸⁵ Kambudzi, A. A. (2008) “Portrayal of a possible path to a single government for Africa” in *Towards a union government for Africa : challenges and opportunities* ed. Timothy Murithi, ISS Monograph Series p. 19f.

⁸⁶ Kambudzi, A. A. (2008) p. 14.

state of the African economy, and the trade-problems connected to the agricultural sector in Africa.⁸⁷ Finally, another problem is that the education in Africa lags behind when it comes to nurturing scientific research and development. A weak education base affects both the people and the production possibilities in the African countries.⁸⁸

Other special features of the condition for regional integration projects in Africa will be reflected in the following parts, which discuss the criteria of democracy, identity and performance respectively.

3.3.2 *Democracy*

According to Beetham and Lord, the best way to study democratic deficit is to look at the basic democratic criteria of authorization, accountability and representation. This paper will focus on the issue of representation, since the AU's aim is to develop the PAP into a popularly authorized and legislative organ. In order to be a legitimate legislative organ, the representatives of the PAP need to be elected by the African people, and this is why the criteria of representation is selected for this study.

The criteria of representation refers to the representation of the people in the quasi-supranational organ. In the EU, the European people is represented in the European Parliament (the EP). In the AU, the PAP will be the organ where the African people in the future will be represented. Different problems are connected to the criteria of representation. Beetham and Lord take their examples from the EP, and the first problem is that the elections to the EP has suffered from very low voter turnout. It is possible that enhancing the powers of the EP could lead to increased interest among the people and in turn result in a higher turnout, but Beetham and Lord says that this is by no means certain.⁸⁹

The second problem Beetham and Lord present when they are talking about representation, is the question of which electoral system should be used in the elections to a supranational parliament. Their study was done in 1998, when no common electoral system for the EP was yet agreed upon. They mean that problems of representation can arise since the national electoral systems of the member-states differ so widely. They state that a broad agreement on the electoral system is important in order to reach democratic legitimacy through popular representation.⁹⁰ In the EP-

⁸⁷ Packer and Rukare (2002) p. 378.

⁸⁸ Kambudzi, A. A. (2008) p. 15.

⁸⁹ Beetham, D., Lord, C. (1998) p. 27f.

⁹⁰ *Ibid.*, p. 28.

elections this is no longer a problem, since a decision from 2002 states that all member-states in the elections to the EU shall use an electoral system which can be found in the family of proportional representation systems (PR-systems). Today most of the member-states use the List PR system, and some use the Single Transferable Vote System, STV.⁹¹ Thus, it is interesting to ask how this issue will be handled in the process of making the PAP a popularly authorized organ.

When it comes to democracy and representation in the African context, Rugumamu discuss the importance of the support from the private sector and the civil society. He says that participation of civil society organizations is crucial to gain support for regionalism. When these organizations deliver their views and interests with fidelity, the effectiveness of the policy process and the consultation norms will increase. Rugumamu says: “The people must not be taken as an unthinking bunch that, like minors, have to have their decisions made by those in authority. The leaders on their part should be both responsible and responsive to the led”.⁹² Hence, he is talking about popular participation of the governed, and public accountability of those in government.

3.3.3 Identity

Beetham and Lord say that the extension of democratic legitimacy through more effective authorization, accountability and representation is largely dependent on the criteria of identity. They argue that divisiveness of competitive electoral politics is only sustainable when a more fundamental unity, such as a national identity, exists. They say:

Once issues of political identity are themselves brought into play in electoral politics, and become a major source of electoral division, then democracy becomes unsustainable, since electoral minorities lack the necessary trust in the majority that their vital interests will be protected.⁹³

Hence, in order to develop democratic quasi-supranational organizations, the development of a common identity among the people – the electorate – within the organization, has to be included. According to Beetham and Lord, unity among the peoples and a sense of belonging affects the participation in democracy in a positive way, and when it comes to elections this means that people

⁹¹ Reynolds, A; Reilly, B; Ellis, A. (2008) *Electoral System Design: The New International IDEA Handbook*, International IDEA, Stockholm, p. 142.

⁹² Rugumamu, S. (2004) p. 13.

⁹³ Beetham, D., Lord, C. (1998) p. 28.

are more likely to exercise their right to vote.⁹⁴ Does it exist sufficient sense of shared identity among the European peoples for making elections a credible tool for democratic legitimacy on the EU-level? There seems to be a consensus among most commentators that the sense of a common European identity is weak among the European peoples. Though, there are several ideas on how to develop this kind of shared identity.⁹⁵

On national level, identities are said to be formed by, among other things, a shared history; a shared language; or a shared culture and customs. On European level, these common denominators do not exist.⁹⁶ When we are looking at identity as founded on a shared history or on ethnic belonging, it is important to remember that we are looking at the creation of shared identities based on a common past. In the case of a project like the EU it may be more accurate to talk about shared values, rights and a common future, in order to establish this shared identity.⁹⁷ Beetham and Lord conclude that if we use the latter view, and if we regard the EU as a guarantor for key rights for all European citizens – such as civil and political rights, basic economic, social and cultural rights, equality of respect and opportunity – the Union could contribute to strengthening the feeling of belonging among the European peoples. In this way, the European elections would be able to guarantee the democratic legitimacy that is their purpose to fill. Beetham and Lord doesn't mean that the European identity should replace the national identity, instead different identities may coexist.⁹⁸

Also when discussing the AU a common identity seems to be a highlighted issue. Ariane Kössler means that African integration, at least in concept, follows the European model of a community of values, and that values may be very important in order to create a common African identity. In the constitutive act of the AU the principles of human rights, democracy, the rule of law and good governance as well as participation of the African peoples in the AU and social justice are emphasized. Kössler says that:

These principles are common to the EU and show the resemblance of the AU's and the EU's philosophy of creating peace, freedom, political solidarity and economic stability among its member states for the well-being of its peoples.⁹⁹

⁹⁴ Beetham, D., Lord, C. (1998) 28ff, 33.

⁹⁵ Ibid., p. 28f.

⁹⁶ Ibid., p. 29

⁹⁷ Ibid., p. 29, see also Soysal, Y. (2002) "Locating Europe", *European Societies*, 4 (3) pp. 265-284.; Sassatelli, M. (2002) "Imagined Europe: The Shaping of a European Cultural Identity through EU Cultural Policy", *European Journal of Social Theory*, 5 (4), pp. 435-451.

⁹⁸ Beetham, D., Lord, C. (1998) p. 29.

⁹⁹ Kössler, A. (2007) p.22.

According to Rugumamu it is also important to “/.../create a long-lasting intellectual foundation for the movement towards African unity among young people”.¹⁰⁰ In order to do this, he argues that the African states should engage the media in the integration project. Another strategy he presents is to hold courses in regional integration in schools and universities, and also to teach Arabic, English, French and Portuguese. Rugumamu sees, just like Will Kymlicka¹⁰¹ and Benedict Anderson, language as an important denominator for the creation of identities. Anderson claims that the peoples who speak the same language find this as a connecting factor, around which a common identity is likely to arise.¹⁰² According to Rugumamu, education in African integration and language would help increase awareness of the African cooperation and integration project, and would also be a way to create a common African identity. Monica Sasstelli has studied the creation of a European identity and says, with reference to Benedict Anderson, that one way of creating an identity can be through the establishment of a common European culture, with different symbols like a flag and an anthem common for all the European citizens. Slowly this strategy will lead to that an imagined community arise and connects the peoples.¹⁰³

Uniting the peoples through a common identity is relevant for all these writers in order to create unity in quasi-supranational organizations. It is through a shared identity that the peoples of the union can be identified as the group that shall give their consent to the authorities – in the case of the AU this concerns giving their consent to the PAP. With Kössler's focus on shared values, and Rugumamu's focus on raising the awareness on African integration, it seems like the strategy of creating an identity based on a common future may be relevant for the AU as well. For Rugumamu, a shared language is an important a base for a shared identity, not only on national level, but also on AU-level. The next chapter will show the means for creating an AU-identity.

3.3.4 Performance

When it comes to performance there are two possible sources of legitimacy deficit: basic ideological disagreement and institutional ineffectiveness. By basic ideological disagreement, Beetham and Lord mean the existence of fundamental disagreement on what ends or purposes the organization in question should serve. Institutional ineffectiveness refers to the question of to which extent the organization in question has the ability to deliver effective policy in the area it

¹⁰⁰ Rugumamu, S. (2004) p. 14.

¹⁰¹ Kymlicka, W, (1995) *Multicultural Citizenship*, Oxford University Press, New York.

¹⁰² Anderson, B. (2006) *Imagined Communities*, Verso, London, p. 42ff.

¹⁰³ Sassatelli, M. (2002) p. 436.

undertakes. It also involves some basic criteria of effective decision making processes, and the capacity to make corrections in the event of 'failure'.¹⁰⁴ Here the focus will be on institutional ineffectiveness. A choice has been made to look closer at the funding of the AU, since the economy is a basic factor for the AU's institutions ability to perform effectively..

Rugumamu says that the institutional capacities needed for carrying out an integration project like the AEC/the AU are missing, as well as the human and financial resources. Again he gets support from Packer and Rukare, who state that “The new organs, such as the court, the parliament, and the Central Bank in particular, will need adequate financial resources to set themselves up and establish their credibility”.¹⁰⁵ Rugumamu states that the OAU lacked institutional capacity and a strong decision-making organ, and he says that the principle reasons for this were “lack of both resources, political will and resolute leadership”.¹⁰⁶ He sees the lack of resources and over-dependence on financial support from donors are two of the main problems to the African integration projects.

Another issue that is crucial for the performance of the AU is that it is important that the African nation-states are willing to give up some of its sovereignty, and also that the member-states support the integration project.¹⁰⁷ In Africa, sovereignty is closely safeguarded, and according to Kambudzi there are different reasons for this. For example, the nation-building in African states is still incomplete, which results in a low national cohesion. The problem he sees is that when the agendas of ethnic, clan, religious and other self-seeking groups come into conflict with the state's own agenda, it is more important for the political leadership to consolidate sovereignty than to yield sovereignty. Other reasons may be distrust among the people for the government and the electoral system, or inability to establish a national professional army because of different group rivalries within the country.¹⁰⁸ Also Godfrey M. Musila emphasizes these issues and he refers to commentators who have pointed out that the main reason why the EU has been successful is the fact that the member states have been willing to give up some of their sovereignty to the EU and its institutions.¹⁰⁹ According to him, the AU has to motivate why the member-states' support is important for the development of the AU.¹¹⁰ Hence, without the support from the member-states – both in willingness to give up parts of their sovereignty and in the willingness, and ability, to give

¹⁰⁴ Beetham, D., Lord, C. (1998) p. 23ff.

¹⁰⁵ Packer C.; Rukare, D. (Apr., 2002) p. 378.

¹⁰⁶ Rugumamu, S. (2004) p. 11.

¹⁰⁷ Ibid., p. 8.

¹⁰⁸ Kambudzi, A. A. (2008) p. 18f.

¹⁰⁹ Musila, G. M. (June 2007) p. 10.

¹¹⁰ Ibid., p. 9f.

their financial support – the AU's ability to perform may be affected, and will thus affect the legitimacy of the Union.

4. THE AFRICAN UNION

In this section we will take a closer look at important AU-documents in order to answer the specifying questions

- *Democracy*: What is the status of the process of making the Pan African Parliament (PAP) a legislative and popularly authorized organ?
- *Identity*: What are the AU's ambitions and means for building a common African identity?
- *Performance*: How is the AU financed, and what can be said about the economy's effect on the AU's capacity to perform effectively?

By answering these questions, the purpose of this paper – which is 'to examine and discuss whether the AU is facing legitimacy problems, and if it does, what kind of legitimacy problems?' – will be fulfilled. The section is divided into three parts, one for each question: Democracy, Identity, and Performance, and the information found in the AU-documents will successively be analyzed through the theoretical framework.

4.1 Democracy – The Pan-African Parliament

In this paper the criteria of democracy focuses on the issue of representation, and more precisely on the project of transforming the Pan-African Parliament (PAP) into a legislative body with members elected by the African people. The PAP was established in 2004 and it has a central role when it comes to the AU's future as a union like the EU, or as a federation. Experiences from other regional organizations have shown advantages to be gained from supranational parliaments like this, and that finding makes the establishment of the PAP an important element in the development-process of the African Union.¹¹¹ According to the Abuja Treaty, the PAP was supposed to be one of the last institutions to be established – according to this document the PAP would not be established until

¹¹¹ Magliveras, K. D., Gino J. Naldi (April 2002) "The African Union: A New Dawn for Africa?". *The International and Comparative Law Quarterly*. Vol 52, No.2, pp 415-425. p. 421.

about 30 years after the treaty entered into force. However, the process of establishing the PAP was accelerated by the ratification of the Sirte Declaration, and the PAP held its inaugural meeting in 2004.

The vision of the PAP is to provide a common platform for the African peoples and their grass-root organizations, in order to make them involved in the decision-making and the discussions on the problems facing Africa. The PAP shall promote democratic principles and participation of the peoples in economic development and integration in Africa.¹¹² This vision is coherent with the recommendation from Rugumamu, who says that participation by the civil society is crucial for regional integration in Africa.¹¹³

It is noteworthy that even though the PAP is one of the most interesting and important institutions within the AU, the Parliament is not very well-developed in the CA. In the CA there is only one article mentioning the PAP, which states that the parliament will “[e]nsure the full participation of African peoples in the development and integration of the continent”, and that “The composition, powers, functions and organization of the Pan-African Parliament shall be defined in a protocol relating thereto”.¹¹⁴ Hence, the composition, functions and the powers of the PAP is not provided for in the CA, instead these issues are provided for in the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament (the Protocol). According to Konstantinos D. Magliveras and Gino J. Naldi (2002) this is something that should be criticized. They say:

The mere establishment of organs without laying down basic regulatory aspects, especially when these organs do not exist under the OAU, questions at least the seriousness of the Union's founding fathers in achieving the stated objectives.¹¹⁵

Today the PAP does not have any legislative powers and its members are not elected by the African people. It does not have strong powers when it comes to the budget, and it is weak in its role of protecting and promoting human rights.¹¹⁶ This means that for an initial period the PAP only has consultative and advisory powers, but the Protocol states that the aim is to develop the PAP into a

¹¹² Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament (The Protocol), Preamble.

¹¹³ Rugumamu, S. (2004) p. 13.

¹¹⁴ The Constitutive Act of the African Union, Article 17(1, 2).

¹¹⁵ Magliveras, K. D., Gino J. Naldi (2002) p. 421.

¹¹⁶ Musila, G. M. (2007) p. 7.

fully legislative institution with members elected by the African people.¹¹⁷ However, when this will happen, and how this transformation will be carried out, is not expressed clearly in the Protocol. In Article 2(3) it stated that:

The Protocol Article 2(3)

The ultimate aim of the Pan-African Parliament shall be to evolve into an institution with full legislative powers, whose members are elected by universal adult suffrage. However, until such time as the Member States decide otherwise by an amendment to this Protocol:

- i. The Pan-African Parliament shall have consultative and advisory powers only; and
- ii. The member of the Pan-African Parliament shall be appointed as provided for in Article 4¹¹⁸ of this Protocol.¹¹⁹

What is stated in Article 5 is that the parliamentarians shall be elected or designated by the national parliaments. Furthermore, in Article 11 the functions and powers of the PAP are presented:

The Protocol, Article 11

The Pan-African Parliament shall be vested with legislative powers to be defined by the Assembly. However, during the first term of its existence, the Pan-African Parliament shall exercise advisory and consultative powers only.¹²⁰

A number of areas within which the PAP shall have advisory powers are also provided for in this article. Though, a problem is that it is not stated when the first term of the PAP ends. The Assembly has been concerned with this issue, and as a step towards setting fixed terms for the PAP, the Assembly requested at the 12th Ordinary Session of the Assembly held in February 2009, the PAP to fix a term limit for its bureau¹²¹ (the bureau consists of the president of the PAP and three vice presidents, and a fixed term for the bureau is not the same thing as a fixed term for the PAP). This was done at the 11th Ordinary Session of the PAP, which was held between May 18th and May 29th 2009, and at the same meeting a new bureau was elected. Gerard Hugo criticizes the fact that the Protocol lacks provisions for the transformation of the PAP into a legislative organ elected by the

¹¹⁷ The Protocol, Article 2(3).

¹¹⁸ Here it seems to be a typographical error in the Protocol, the appointment of members of the PAP is provided for in Article 5 in the Protocol, and therefore Article 5 will be referred to in this paper.

¹¹⁹ The Protocol, Article 2(3).

¹²⁰ The Protocol, Article 11.

¹²¹ Assembly of the African Union. Twelfth Ordinary Session 1-3 February 2009, Addis Ababa, "Decisions, Declarations, Message of Congratulations and Motions". Decision on the Review of the Protocol Relating to the Pan African Parliament (PA) DOC. EX.CL/459 (XIV)

people, and he sees this as a weakness of the PAP and its possibilities to perform effectively and to be taken seriously.¹²²

Article 25 in the Protocol says that the protocol shall be reviewed five years after it entered into force. This is a process taking place right now, and at the 11th Ordinary Session of the PAP this issue was highly debated. A working group within the Committee on Rules, Privileges and Discipline has been working on an amendment of the Protocol since 2008, and at the 11th Ordinary Session the committee presented the final draft proposal to amend the Protocol.¹²³ When it comes to the issue of transforming the PAP into a legislative organ, two articles are of special interest – the proposed amendments of Article 2 and Article 11.

In the proposed amendment of Article 11, concerning the functions and powers of the PAP, it is stated that:

Proposed amendment of the Protocol, Article 11

The Pan-African Parliament shall be vested with legislative, oversight and consultative powers,¹²⁴

The sentence from the existing Protocol saying that the PAP shall exercise advisory powers only does not exist in the proposed amendment, and this shows the willingness to transform the PAP into a legislative body. When it comes to the legislative powers, the proposed amendment of Article 11 states that the PAP will, among other things, undertake responsibilities concerning the respect of Human and Peoples Rights; the promotion of good governance and the Rule of Law; examine the consideration, debate and adopt the AU budget; the harmonization of the Laws of the Member States; the Promotion of the programmes of the AU in the constituencies of Member States. The Article also says that the PAP authorize the ratification of Treaties and International Conventions.¹²⁵

¹²² Hugo, G. (2008) p. 1 and 4.

¹²³ The Pan-African Parliament Debates Official Report of the Eleventh Ordinary Session; Allocution du President du Parlement Panafricain – Union Africaine.

¹²⁴ The final draft proposal to amend the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament (Draft proposal to amend the Protocol), Article 11. The draft proposal was presented at the 11th ordinary session of the Pan-African Parliament, (at the PAP's website also referred to as the Hansard Reports for the Eleventh Ordinary Session of the PAP) and can be found in The Pan-African Parliament Debates Official Report of the Eleventh Ordinary Session, (http://www.pan-africanparliament.org/DocumentsResources_DisplayDocument.aspx?Type=Docs&ID=1115 accessed: August 8th, 2009).

¹²⁵ Draft proposal to amend the Protocol, Article 11.

Concerning Article 2(3) the old version of the article was quoted above, and the proposed amendment says:

Proposed amendment of the Protocol, Article 2(3)

The Pan-African Parliament shall be a legislative body of the African Union, whose members are elected ultimately by universal adult suffrage. However, until such time as the Member States decide otherwise by an amendment to this Protocol, the Members shall be elected or nominated as provided for in Article 5 of this Protocol.¹²⁶

The amendment from “The ultimate aim of the Pan-African Parliament shall be to evolve into an institution with full legislative powers, ” in the existing Protocol to “The Pan-African Parliament shall be a legislative body” shows a clear statement concerning the transformation of the PAP. Though, when it comes to the issue of popular authorization, Article 5 in the draft proposal says that the members of the parliament still shall be elected or designated by the national parliaments.¹²⁷ At the 11th Ordinary Session some of the current members of Parliament discussed the issue of electing the representatives by universal suffrage. Among other things it was stated that the process will have to be progressed step by step and that electoral laws have to be stipulated.¹²⁸ Although, no real discussion was held on the subject.

In the proposed amendment of Article 2(4) a fixed term for the PAP is set at 5 years.¹²⁹ The work with the amendment of the Protocol will continue, and it has not been possible to find information on when the new Protocol will be ready for ratification.

According to Beetham and Lord the people should give its authorization to the parliament if it shall be regarded as a legitimate legislative organ. The way in which this authorization is carried out – that is, the question of which electoral system should be used in these elections – is one of the difficulties concerning their criteria of democracy.¹³⁰ As we could see earlier in the text, the EP is today elected through PR-systems in all the member-states. In the case of the PAP, no changes were made in the proposed amendment of the Protocol when it came to the process of letting the African peoples elect their representatives to the PAP. This means that until the member-states decide

¹²⁶ Draft proposal to amend the Protocol, Article 2(3).

¹²⁷ Draft proposal to amend the Protocol, Article 5.

¹²⁸ See statement by Member of Parliament Hon. Tidjani-Serpos, in The Pan-African Parliament Debates Official Report of the Eleventh Ordinary Session p. 208.

¹²⁹ Draft proposal to amend the Protocol, Article 2(4).

¹³⁰ Beetham, D. (1994) p. 27ff.

otherwise by an amendment to this Protocol, the members of the PAP shall be elected or nominated by the national parliaments.¹³¹ The issue of popular authorization of the PAP, and how this will be done, does not seem to be an issue that is given high priority right now, but it is still presented as the aim of the PAP.

If we recall Beetham's theory on legitimacy, he stated that one part of being a legitimate holder of power was to have the peoples consent, and this consent may be given by casting a vote in elections. Furthermore, in order to gain legitimacy a high voter turnout is needed in the elections. A low voter turnout would, according to Beetham, mean a lack of popular authorization (consent), in other words: "delegitimation".¹³² According to Beetham and Lord, who study the EU and the elections to the EP, a high voter turnout may be achieved by strengthening the EP's powers even more in order to make it more relevant for the people to vote (although, they are not certain that this will happen). Also – as we could see under the section concerning the criteria of identity – a stronger, common European identity is needed, since this may affect the voter turnout in a positive way.¹³³ When applying this on the AU, this means that the PAP would have to be given more powers in order to make it more attractive for the people to vote in the future PAP-elections. A strong African identity could also be necessary for getting a high voter turnout. This will be discussed in the next section.

During the 11th Ordinary Session of the PAP, Hon. Idriss Ndele Moussa was elected the new president of the PAP. He stated that one of the main objectives of the PAP will be the transformation of the parliament from an advisory body into a legislative body. This enormous task includes the building of good relationships between the PAP and other organs of the African Union and he said that this had earlier been one of the PAP's problems.¹³⁴ At a meeting with the Chairperson of the African Union Commission, Mr. Jean Ping, the PAP president again said that his main task is to transform the PAP into a legislative organ, and that this will be done before year 2011.¹³⁵ This issue was also presented at the meeting of the Executive Council in July 2009. The president of the PAP spoke to the Executive Council and presented a plan for the transformation of the PAP into a legislative organ. He said that from 2011, the PAP wish to have some legislative within some

¹³¹ Draft proposal to amend the Protocol, Article 2 and 5.

¹³² Beetham, D. (1994) p. 19.

¹³³ Beetham, D., Lord, C. (1998) p. 27ff.

¹³⁴ "PAP Eleventh Ordinary Session Ends" May 25th, 2009, (<http://www.pan-africanparliament.org/News.aspx?ID=467> accessed: July 9th, 2009).

¹³⁵ "Idriss Ndele Moussa, Newly Elected Chairperson of the PAP, meet the AUC Chairperson, Mr. Jean Ping" June 18th, 2009 (<http://www.pan-africanparliament.org/News.aspx?ID=478> accessed: July 9th, 2009).

working areas, such as good governance and Human Rights issues; issues concerning free movement of peoples; goods and services; environment and agriculture; and infrastructure. He said that this transformation is important when the union now is heading towards a stage where a union government shall be reality, since a union government cannot exist without a legislative organ.¹³⁶ The new president of the PAP shows willingness to transform the PAP into a legislative power, and this is a positive statement for the PAP and its development. Though, it would have been interesting to hear the president talk about making the PAP a popularly authorized organ. It seems like the plan for transforming the PAP is a gradual process, where, at least parts of the legislative powers come first, and where the issue of representation will be handled later.

The legitimacy of the PAP as a legislative organ is still difficult to discuss, since not very much has been said concerning how this transformation will be done and how the representatives will be elected. It is important to remember that the PAP has existed for only five years, though, the establishment of the organ has been rapid and its role as a legislative organ becomes even more important when talking about a Union Government. The PAP has presented high ambitions and that it has a responsibility to meet its ambitions in order to be a legitimate organ. According to Beetham and Lord, it has to deliver effective policy in the area it undertakes. Finally, in order to strengthen the legitimacy of this quasi-supranational organ, it has been argued that within the African context it is also important that the member-states are willing to give up their sovereignty and to support the AU institutions. So, the PAP stands before the task to perform effectively on the challenge to transform the PAP into a legislative organ elected through universal suffrage, and at the same time the African states have to give their support to the PAP, as well as to the other institutions of the AU. This is how the PAP can gain legitimacy as a Pan-African legislative organ.

4.2 Identity – A shared African identity?

Beetham and Lord say that a common identity is important when it comes to establishing a legitimate supra-national organization, foremost since a common identity is crucial in order to give the authorities popular authorization. A sense of belonging among the people is an important base for democratic state or organization.¹³⁷ Also Rugumamu sees a need to create a common African identity and to create an awareness of the AU among Africans.

In the Preamble to the CA, the Organization of African Unity (OAU) is commended for having

¹³⁶ Allocution du Président du Parlement Panafricain – Union Africaine.

¹³⁷ Beetham, D., Lord, C. (1998) p. 28.

played an invaluable role in the liberation of the continent and the affirmation of a common identity.¹³⁸ The vision of the AU is a united and strong Africa, where there is a need to build a partnership between governments and all segments of civil society in order to strengthen solidarity and cohesion among the peoples of Africa.¹³⁹ In Article 13 in the same document it is stated that the Executive Council will have the task to coordinate and take decisions on matters concerning insurance, education, culture, nationality, residency and immigration matters, social security and also establishment of a system of African awards, medals and prizes.¹⁴⁰ These issues can be said to be important for the creation of a continent-wide identity, based on a common future instead of on a common past. Insurance, education, nationality, residency, immigration matters, and social security are examples of how the Union can unite the peoples by being a rights protector, in accordance with Beetham's and Lord's theory.¹⁴¹ To establish continent-wide awards, medals and prizes is coherent with what Sassatelli in the European context describes as creating a European culture-policy.¹⁴² We can thereby see that this strategy also is used in the African integration-project.

The Executive Council have a great role in the identity-project, but also the PAP has an important role. The PAP is the organ in which the African peoples shall be represented and it will be the place where the grass-root organizations of the peoples will get the chance to be involved in the discussions and the decision-making processes.¹⁴³ In the Protocol it is stated that there is an:

The Protocol, Preamble

imperative and urgent need to further consolidate the aspiration of the African peoples for greater unity, solidarity and cohesion in a larger community transcending cultural, ideological, ethnic, religious and national differences.¹⁴⁴

The PAP shall work for promoting democratic principles and popular participation¹⁴⁵ and one of the PAP's objectives are to familiarize the African peoples with the objectives and policies aimed at integrating the African continent through the establishment of the AU.¹⁴⁶ It shall also work for strengthening solidarity on the continent and build a sense of common destiny among the peoples of

¹³⁸ The Constitutive Act, Preamble.

¹³⁹ The Constitutive Act, Preamble.

¹⁴⁰ The Constitutive Act, Article 13.

¹⁴¹ Beetham, D., Lord, C. (1998) p. 29f.

¹⁴² Sassatelli, M. (2002) p. 436.

¹⁴³ The Protocol, Preamble.

¹⁴⁴ The Protocol, Preamble.

¹⁴⁵ The Protocol, Preamble.

¹⁴⁶ The Protocol, Article 3(4).

Africa.¹⁴⁷ The working languages of the PAP will be, if possible, African languages, Arabic, English, French and Portuguese.¹⁴⁸

The Accra Declaration is an AU-declaration from 2007 where it is agreed upon that the common goal for the AU is to evolve into the United States of Africa with a common Union Government. Also in this declaration the question of a common African identity is emphasized. It is stated that the involvement of the African peoples are of great importance in order to ensure that the AU is a Union of peoples. Also the African diaspora has a crucial role in the process of economic and political integration of Africa.¹⁴⁹ Through the Accra Declaration the ambition to create a common AU identity is given even greater importance, and it reminds us that a united Africa is not only of importance for the peoples living on the African continent.¹⁵⁰ This project is also important for ancestors of Africans who was displaced through the European colonization and the slave trade.

Beetham and Lord emphasize that on quasi-supranational level the traditional way of creating national identities – through for example shared history, ethnicity and language – is neither possible or demanded. Instead they chose to look at values, rights and a common future as means for uniting the peoples. To be governed by a shared government protecting all the peoples rights is a suitable ground for a shared identity on quasi-supranational level. Shared values are also, according to Beetham, a crucial part of the legitimacy concept, since power ought to be derived from shared values and beliefs in order to be able to say that the holder of power is legitimate. Weak justifications by lack of shared values and beliefs Beetham calls “legitimacy deficit”, and if a common African identity based on values can not be achieved, this may be a threat to the AU's legitimacy. Ariane Kössler expressed that shared values are important for creating unity on the African continent, and when studying the treaties and declarations of the AU, we can see that values such as gender equality, human rights, good governance and the rule of law are highlighted in the CA, as the objectives of the Union. These values and rights are also found in the Principles of the Union.¹⁵¹ In the Protocol the promotion of these principles is included in the objectives of the PAP.¹⁵² It has been expressed in several important AU-documents that the union strives to establish

¹⁴⁷ The Protocol, Article 3(8).

¹⁴⁸ The Protocol, Article 17.

¹⁴⁹ The Accra Declaration, Preamble, Article 4.

¹⁵⁰ The current Chairman of the AU Assembly, Col. Muammar Gaddafi, Libya, has said that he wants the future “United States of Africa” to include Caribbean islands with African populations, such as Haiti, Jamaica and Dominican Republic. According to Col Gaddafi this would create a bridge between Africa and Latin-America. (“Gaddafi wants Caribbean in Africa” BBC News: <http://news.bbc.co.uk/2/hi/africa/7883178.stm>, Accessed July 15th, 2009). This is an interesting statement when talking about identity, territoriality, inclusion and exclusion.

¹⁵¹ The CA, Article 3, Article 4.

¹⁵² The Protocol, Article 3.

a common African identity, both on the African continent and among the Africans in diaspora. This will help create a strong unity among the Africans and it is an important part of this integration project. Rugumamu mentions that in order to increase the awareness of the AU, the schools and universities should give courses in English, French, Arabic and Portuguese. Language is a big part of a persons identity¹⁵³ and to create a common identity on the African continent may be difficult when looking at the many different languages that exists on the continent. To teach the four languages mentioned above would according to Rugumamu facilitate this project. The PAP's wish is to use these four languages as working languages (together with African languages), and this may also be a part of the “African identity-project”.

With the existence of a strong unity it will be easier to promote peace, which in turn may help generate development, security, better conditions for trade arrangements and better living standards for the African peoples. According to Rugumamu the media has a great role in this project – it should have the task to create awareness of the AU among the Africans. A shared identity may also, as we saw in the preceding section, help generate a high voter turnout in elections, in this case in the future elections to the PAP. We can now see the interconnectedness between identity and democracy. The PAP will be the platform where the Africans can meet and express their opinion and it shall work for uniting the peoples of Africa. At the same time, it is in itself dependent on a common identity in order to get a high, legitimizing, voter turnout in the elections of its parliamentarians.

4.3 Performance – How is the AU financed?

The question “How is the AU financed, and what can be said about the economy's effect on the AU's capacity to perform effectively?” is derived from Beetham's and Lord's concept of “institutional ineffectiveness” which refers to whether the system in which the organization operates facilitates or hinders the organization, and whether the quasi-supranational organization has the ability to deliver effective policy in the area it undertakes. Rugumamu argued that lack of funds has been a principal reason for the OAU's ineffectiveness, and he got support from Packer and Rukare. Against that background, it is relevant to study how the AU is financed and to discuss the economy's effect on the AU's capacity to perform effectively. This section will be based on the information concerning the financing of the AU found in the CA and in the Abuja Treaty. Additional information will be found in the book chapter “Financing the activities of a Union Government for

¹⁵³ See for example Anderson, B (2006) and Kymlicka, W. (1995).

Africa: Experiences, challenges and prospects” by Dr. Emmanuel Akwatey, in the book *Towards a union government for Africa : challenges and opportunities*.

The AU's financing requirements are divided into two parts: one operational budget and one budget for development activities. The operational budget is provided for in the Abuja Treaty. This is interesting, since the CA sets out a clearly ambitious project for the African continent, but when it comes to the financing of the AU, the CA actually lacks provisions for this. That is why the rules provided for in the Abuja Treaty should be applied on the AU as well.¹⁵⁴ The Abuja Treaty states that “The budget shall be funded by contributions made by Member States in accordance with the scale of assessment of the OAU”.¹⁵⁵ According to Rugumamu and Packer and Rukare, the reason for the failures of the OAU depended mainly on its lack of funding, and therefore it is interesting to see that the AU's economy is based on the same provisions as the economy of the OAU – that is, through member-state contributions – which historically has seemed to be an inadequate method for funding an African integration project.

One problem the AU is facing today is that a number of member-states fail to pay their annual subscriptions, or that the payments have in many cases been delayed. This issue was discussed at the 13th Ordinary Session of the Assembly, held between in 2009, in Sirte, Libya. The Assembly urged the member-states to pay their contributions on time, and concluded which countries that are under sanctions for not having paid their contributions and how this problem may be resolved for each of the concerned countries.¹⁵⁶ In 2006 the AU Commissioner for Economic Affairs Maxwell M. Mkwezalamba stated that accumulation of outstanding contributions, and delayed payments are big problems for the financing of the AU. He said that on average only 40% of the statutory contributions are collected every year.¹⁵⁷

Together with the problem of delays and non-payment of the contributions, it has by some also been argued that the member-states contributions are too small. As a consequence of these problems, the AU is today dependent on donors and development partners (both multilateral organizations and single governments) who contribute to the financing of the AU. Also wealthier member-states, such

¹⁵⁴ Packer C.; Rukare, D. (2002) p. 377.

¹⁵⁵ Treaty Establishing the African Economic Community (The Abuja Treaty), Article 82(2).

¹⁵⁶ Decisions and Declarations, Assembly of the African Union, Thirteenth Ordinary Session, 1-3 July 2009, Sirte, Libya (<http://www.africa-union.org/root/AU/Conferences/2009/july/summit/13thsummit.html> accessed: July 31st, 2009).

¹⁵⁷ Statement by H. E. Dr. Maxwell M. Mkwezalamba Commissioner for Economic Affairs, African Union, On the occasion of the opening of the meeting of governmental experts on alternative sources of financing the African Union 29 may, 2006.

as Algeria, Egypt, Libya, Nigeria and South Africa periodically make donations, additionally to their annual payments.¹⁵⁸

Furthermore, since the member-state contributions tend to be inadequate, the development budget of the AU has been highly reliant on donations from international development partners, such as the EU and single governments from the industrial countries. Dr. Akwetey argues that the problem of non-payment or delayed payment of the annual subscriptions; the problem of the relatively small amounts of these annual payments; and the problem of the wealthier member-states extra-contributions, is a serious obstacle for the AU, and that this partially contributes to the dependence of the AU on international donors and cooperation partners to finance its budget.¹⁵⁹

Thus, it may be argued that the funding of the AU is insufficient, and this problem is a large threat to the AU's legitimacy. According to Beetham and Lord's theory, the institutions have to be given the possibilities to perform effectively, otherwise the AU will be a very fragile organization without any power to act. It has been argued that one of the main reasons for the OAU's ineffectiveness was lack of funds. Still, the AU is funded in the same way – through member-state contributions. This method still gets critique and this issue seems to be a difficulty for the AU. Outstanding payments, delayed payments and too small contributions are the main problems of the current method for funding the AU. Therefore, the AU also relies on contributions from international donors and extra payments from wealthier member-states. Rugumamu argues that it is important that the AU does not depend on the donor community. If the AU is depending on external donors, then we may pose the questions concerning to which extent the African people own the AU. The economy dilemma is a serious dilemma, since the economy sets the conditions for all the AU institutions performance.

Finally, in order to create an effective, legitimate quasi-supranational organization in Africa, Rugumamu, Musila and Kambudzi emphasize an additional issue that may be connected to the performance criteria. They talk about the importance of the member-states willingness to give up some of their sovereignty and to support the AU institutions. Musila says that the AU needs to motivate why its member-states shall give their support and yield some of their sovereignty, but here it is also important to regard the member-states ability to take these actions. At least financially there seem to be several problems, to which extent the member-states is giving up sovereignty in practice and in other ways giving their support to the AU-institutions are left as a subject for further

¹⁵⁸ Akwetey, E. (2008) "Financing the activities of a Union Government for Africa: Experiences, challenges and prospects" in *Towards a union government for Africa : challenges and opportunities* ed. Timothy Murithi, p., 96f.

¹⁵⁹ *Ibid.*, p., 97.

studies.

5. CONCLUSIONS

The purpose of this study was to examine whether the AU is facing legitimacy problems, and if it does, what kind of legitimacy problems? The theoretical background was based on Beetham's and Lord's theory on how to study legitimacy on quasi-supranational level, backed up by theories on regional integration in Africa. According to Beetham and Lord, legitimacy in this type of organization can best be studied through the criteria of democracy, identity and performance. Different aspects of these criteria may be studied, and in this paper the criteria of democracy was focused on representation, and more precise on the status of the process of transforming the Pan-African Parliament into a legislative power with representatives elected by the African peoples; the criteria of identity was represented by the the question “What are the ambitions and means for building a common African identity?”; and the criteria of performance was focused on the financing of the AU. In this section the conclusions will be presented.

In order to create an African Union that belongs to the people, the Pan-African Parliament needs to be transformed into a legislative power. In turn, to be a legitimate legislative power, the representatives in the PAP need to be elected by the African peoples. According to Beetham and Lord this should be done through a common electoral system for all the member-states, and it is also crucial to get a high voter turnout in these elections. The ambition of the AU is to transform the PAP into a popularly authorized legislative organ, but what is the status of this project? The issue seems to highly discussed at present. We could see that this issue was debated at the Assembly's meeting in January 2009, at the PAP's 11th Ordinary Session in May 2009 and at the Executive Council's meeting in July 2009. At the 11th Ordinary Session of the PAP the final draft proposal for amendment of the Protocol was presented. In the proposed amendment it says that the PAP shall be a legislative organ with representatives elected by universal suffrage, and that it will exercise legislative powers on issues concerning Human and Peoples`Rights; the promotion of good governance and the Rule of Law; examine the consideration, debate and adopt the AU budget; the harmonization of the Laws of the Member States; the Promotion of the programmes of the AU in the constituencies of Member States; and authorize the ratification of Treaties and International

Conventions.¹⁶⁰ The new president of the PAP, Hon. Idriss Ndele Moussa, expressed both in his inaugural speech and at the presentation before the Executive Council in July 2009, that the great task for the PAP is to be transformed into a legislative organ. He also said that from 2011 the PAP wish to have legislative powers within certain political areas. The fact that this was expressed to the Executive Council shows that the issue is discussed at different levels of the AU-organization. Though, when it comes to the issue of letting the African peoples elect their representatives to the PAP, no action seems to be taken at present. The proposed amendment of the Protocol states that the parliamentarians shall still be appointed by the member-states national parliaments.

The issue of popular authorization connects the democracy criteria with the identity criteria. According to Beetham and Lord, a shared identity is important for a quasi-supranational organization since a common identity is fundamental for a stable democracy and because it is important to define who the electorate is. Also, a common identity may affect the voter turnout in a positive way. A shared African identity is one of the ambitions of the AU, and again the PAP has a decisive role. Many of the activities of the PAP refers to the project of uniting the African peoples and to the creation of a common African identity. We can now see that the issues of the PAP's powers, a shared identity, and the voter turnout in future elections are interconnected. One reason for voting would be that the PAP's powers are strong enough, because then the voters will find it relevant to vote. Furthermore, one of the tasks of the PAP is to unite the African peoples and to create a common African identity, and also a shared identity will be important in order to get a high voter turnout. Finally, the PAP is dependent on a high voter turnout in order to be legitimate holder of these stronger powers.

When it comes to the funding of the AU, it seems like the financing of the AU is questionable. Since the economy constitutes the environment for the AU institutions performance, a weak economy is of great concern for the legitimacy of the AU and all its institutions. In the context of this paper, in which a lot of focus has been on the PAP, also the economy of the AU has a strong impact on the legitimacy of the PAP as a legislative organ, since the AU's economy sets the conditions for the PAP's ability to perform effectively. In the African context it is also important that the member-states are willing to yield some of their sovereignty and to support the AU institutions. Since this paper only has focused on the question of economy as a means to create a setting for effective performance of the AU, this paper can not give any further comments on to which extent the member-states support the AU-institutions, except for through payment of annual subscriptions.

¹⁶⁰ Draft proposal to amend the Protocol, Article 11.

Yes, the AU seems to be facing legitimacy problems, and these problems are mirrored in first, a parliament which needs greater powers than today, especially with the development of a Union Government. Furthermore, in order to be a legitimate legislative power the PAP needs the consent of the African peoples. The transformation into a legislative organ has started, but to let the people elect their representatives to the PAP has not yet been provided for. Secondly, in a weak economy. The principal mean for funding the AU is through member-state contributions. To use this method for funding the AU has shown several disadvantages, such as outstanding payments and delayed payments. This has made the AU dependent on support from the donor society, a situation which results in questions concerning to which extent the African peoples own the AU. A weak economy is a major obstacle for the union's development, since this will hinder the AU institutions' performance. The AU also stand before a huge task of creating a shared African identity – that is, creating the African demos. The ambitions to create an African identity exists, expressed in different AU-documents, and the PAP has a great role in this project. Though, to study how this project is going was not a part of this paper's purpose and is left here for further research.

We can link these conclusions to the two traditional ways of looking at legitimacy – that is, as a moral phenomenon or as a relative concept. The political philosophers regard power as legitimate if the rules that governs the power are justifiable according to normative principle that can be defended by all peoples by rational argumentation. These normative principles are fixed and universal. Also Beetham's theory on legitimacy have a fixed element – a universal, underlying structure – which is based on a view of the human being as a rational moral agent. And as rational moral agents, the humans agree upon the rules for exercising power. Beetham also emphasizes that the people shall act to provide evidence for their consent to the holder of power, for example by casting their ballot in elections. This demand for rational argumentation found in both the political philosophical tradition and in Beetham's theory can be linked to the need of transforming the PAP into a legislative organ, and to the need of making this legislative organ popularly authorized. The PAP will in the future have the power to create laws, and if the rules governing the AU shall be legitimate these should also be decided upon in the PAP, since this will be the organ elected by the people – the rational moral agents.

The position derived from the sociological tradition claims that legitimacy is relational and relative. This means that what is legitimate in one society may be illegitimate in another society. Also Beetham holds this view in his theory, and he says that the power has to be derived from a valid source of authority. Current beliefs in the specific society decides what a valid source of authority

is, and this means that the opinion on this issue may differ between different societies. When we apply this view on the AU we can see that on the African continent there are the 53 member-states that shall agree on what a valid source of authority is. It is not only the leaders of the individual states that shall agree upon this, the consent shall also be given by the people of Africa. Therefore, the issue of letting the people elect their representatives to the PAP, and the issue of how this will be done, is of great importance for the development of the African Union, and it is a weakness that this is not provided for in the proposed amendment of the Protocol. To the issue of popular authorization also the issue of a common African identity is connected, and maybe the values – such as gender equality, human rights, good governance and the rule of law – which are highlighted in for example the Protocol and the CA – will help create an African identity and constitute, at least partially, a valid source of authority.

In this paper a study of a young quasi-supranational organization in rapid development has been carried out. It is a study of an organization where important decisions concerning its future are being taken with short intervals. The latest important decision for the Union's rapid development was taken in Sirte in July 2009, where it was decided that the AU Commission shall be transformed into the AU Authority, which is a step towards the creation of a Union Government. This development shows that there are high ambitions to unite the African continent, but it also raises questions concerning to which extent the African peoples are aware of these processes and to which extent they give their consent to the authority of the Union. This paper has resulted in some interesting conclusions concerning the legitimacy of a quasi-supranational organization in Africa, and many interesting research questions may be derived from this paper. Further studies within this area may concern the future elections to the PAP, the practical work with creating a shared African identity – similar to the studies Sassatelli and Soysal has done on the creation of a European identity – or maybe on the ongoing process of finding new ways of funding the African integration project.

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